

DEPARTMENT OF THE ARMY
Wilmington District, Corps of Engineers
Post Office Box 1890
Wilmington, North Carolina 28402-1890

General Permit No. 198000291
Name of Permittee: General Public
Effective Date: July 24, 2000
Expiration Date: December 31, 2004

**DEPARTMENT OF THE ARMY
GENERAL (Regional) PERMIT**

A general permit to do work in or affecting navigable waters of the United States and waters of the United States, upon recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (U.S.C. 403), and Section 404 of the Clean Water Act (33 U.S.C. 1344), is hereby issued by authority of the Secretary of the Army by

District Engineer
U.S. Army Engineer District, Wilmington
Corps of Engineers
Post Office Box 1890
Wilmington, North Carolina 28402-1890

TO AUTHORIZE THOSE CONSTRUCTION ACTIVITIES IN THE 20 COASTAL COUNTIES RECEIVING PRIOR APPROVAL FROM THE STATE OF NORTH CAROLINA IN THE FORM OF A COASTAL AREA MANAGEMENT ACT (CAMA) PERMIT, A PERMIT TO DREDGE AND/OR FILL, AND/OR A WATER QUALITY CERTIFICATION, AND ARE OTHERWISE NOT ELIGIBLE FOR FEDERAL AUTHORIZATION IN THE FORM OF A NATIONWIDE PERMIT OR ANOTHER REGIONAL GENERAL PERMIT.

1. Operating Procedures:

a. Applications for joint State and Federal authorizations under this general permit process will be accepted directly through the North Carolina Division of Coastal Management (NCDCM). Receipt of a complete application by the NCDCM will initiate the State's field review to include a site visit and preparation of a Field Investigation Report and a State Bio-Report. The NCDCM will forward a copy of the complete application, including a copy of their Field Investigation Report and Bio-Report, to the appropriate Corps of Engineers' Field Office which will initiate Federal review of the project.

Immediately upon receipt by the Corps, an application will be assigned an action identification number, acknowledged, and the appropriate Corps' Regulatory Project Manager will examine the application to assure that it can be processed pursuant to this general permit. If it is determined by the Corps that an application is eligible for another regional general permit or a nationwide permit at this time, it may be removed from this process and expedited to the most readily available permit category. The applicant and the NCDCM will be furnished written notification of the Project Manager's determination. Notification to the applicant will include a brief description of the administrative process. For those proposals that may result in a discharge into waters of the United States, including wetlands, the North Carolina Division of Water Quality (NCDWQ) and the applicant will be informed regarding the applicant's need to obtain a Water Quality Certification in accordance with Section 401 of the Clean Water Act.

b. The Corps will provide copies of the application and plans, the NCDCM's Field Investigation Report, and the State Bio-Report, to the U.S. Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NMFS) and the U.S. Environmental Protection Agency (EPA). Receipt of this material will initiate the Federal Agencies' review. The agencies will be provided sufficient time by the Corps, normally thirty (30) days, before their comments or recommendations, including any recommended modifications or conditions necessary to make the proposal acceptable, must be received by the Corps. Should the agencies not comment during the review period, it will be assumed they offer no objections. Extensions of time will be granted for agency review only if justified by unusual circumstances. If an extension is granted that would substantially delay a NCDCM decision by the date on which a NCDCM decision must be made, the application may be removed from this general permit.

c. The permit review process conducted by the NCDCM is a public process involving public notices in local newspapers, public hearings and various public appeal procedures. To further inform the public, the Corps will distribute, at intervals of approximately two (2) weeks, an additional public notice listing those permit applications received and being considered by NCDCM and the Corps under this general permit since the preceding notice. The notice will invite, for not less than fifteen (15) days, public comments and/or requests for additional information and for public hearings. All comments will be considered in the overall State/Corps decision on a permit.

d. This general permit does not, in any way, alter established procedures or responsibilities, as required by Federal laws, memorandum of agreements (MOA's) or administrative regulations with respect to the Corps' coordination with the review agencies. The applicant will continue to have the opportunity to rebut any objections to a proposal.

e. After Federal review agency comments are received, they will be reviewed by the Corps and a coordinated Federal position will be prepared and furnished to the NCDCM, in Raleigh, within forty-five (45) days after receipt of the State Environmental Field Consultant's Report. The coordinated Federal position will include all conditions (including recommendations for denial) recommended by the Federal agencies unless a changed or omitted condition has the prior written agreement of the affected agency.

f. In those cases where the Corps does not concur with conditions or recommendations of one or more of the Federal review agencies, no coordinated Federal Position will be furnished to the NCDCM until and unless Federal agency agreement has been reached including, if necessary, entering the referral procedures outlined by current memorandum of agreements (MOA's) between the Army and respective agencies. The Federal review agencies will be provided a copy of the coordinated Federal position at the time they are furnished to the NCDCM.

g. If the conditions (including recommendations for denial) from the review agencies are unacceptable to the NCDCM, the NCDCM will contact the Corps within ten (10) days of receipt of the Federal position to resolve the conflict. If resolution of the conflict involves changes to the conditions or recommendations provided by the Federal review agencies, the provisions of paragraphs e. and f. (above) will apply, including the procedures of the MOA's, if appropriate. If the conflict is resolved to the satisfaction of the Corps and affect review agencies, the NCDCM permit will be issued and the authority of the general permit will apply.

h. If the conflict is not resolved within the time necessary for a decision by the NCDCM, the NCDCM may proceed, independently, to conclude the State action without inclusion of the Federal position. In such case, the applicant and the NCDCM will be notified immediately, in writing, that the State permit does not satisfy the Federal permit requirements and that the proposal in question may not proceed without Federal authorization.

i. If the coordinated Federal position is not in conflict with State agencies' positions, law, regulation or policy and is otherwise acceptable to the NCDCM, a State permit will be developed by the NCDCM fully incorporating the State and Federal positions. copies of the permit will be furnished to the applicant and the Corps. When required, a copy of the Section 401 Waate Quality Certification will be furnished to the applicant and the Corps. Issuance of both the NCDCM permit and the NCDWC 401 Water quality Certification, if required, must proceed validation of this general permit by the District Engineer or his representative.

j. If the NCDCM permit or Section 401 Water Quality Certification is denied, the applicant will be informed that Federal authorization is denied without prejudice.

k. No work may proceed under this general permit until and unless the District Engineer or his representative provides written validation that the procedures and conditons of the general permit have been satisfied.

l. Following issuance of a NCDCM permit, the project will be monitored by NCDCM personnel and inspected for compliance with NCDCM regulations and procedures. Monitoring and periodic evaluation will also be conducted by Corps' personnel. If, any time, a violation of the NCDCM permit is discovered which would also have been a violation of the Federal position, enforcement action may be taken by both the NCDCM and the Corps in accordance with their respective regulations and policies.

m. Any work performed in any area under the regulatory jurisdiction of the Corps of Engineers that does not comply with the terms and conditions of this general permit must have prior approval under the customary regulations administered by the Corps as found in 33 CFR 320-329.

n. All activities identified and authorized by this general permit must be consistent with the terms and conditions of this authorization. Any activity accomplished, but not specifically identified and authorized herein, may constitute a violation of Federal statute and result in legal proceedings as may be considered appropriate by the United States Government.

General Conditions.

a. All activities authorized by this general permit that involve the discharge of dredged material in waters of the United States will be consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pre-treatment standards and management practices established pursuant to the Clean Water Act (33 U.S.C. 1344) and applicable State and local law. If the proposed activity involves the discharge of dredged material in waters of the United States, before the commencement of any work, the applicant will satisfy the North Carolina Division of Water Quality (NCDWC) regarding the need for a Water Quality Certification pursuant to Section 401 of the Clean Water Act.

b. There will be no unreasonable interference with navigation or the right of the public to riparian access by the existence or use of activities authorized by this general permit.

c. A permittee, upon receipt of written notice from the Wilmington District Engineer of failure to comply with the terms or conditions of this general permit, will, within sixty (60) days, without expense to the United States Government, and in such manner as the Wilmington District Engineer may direct, affect compliance with the terms and conditions or return the work-site to a pre-work condition.

d. The permittee must make every reasonable effort to perform the work authorized herein in a manner to minimize any adverse impact on fish, wildlife and aquatic resources.

e. The permittee must perform the work authorized herein in a manner to minimize any degradation of water quality. The activity will be conducted to prevent a significant increase in turbidity outside the area of construction or construction-related discharge. Increases such that the turbidity in the waterbody is fifty (50) NTU's or less in all rivers not designated as trout waters by the North Carolina Division of Water Quality (NCDWC), twenty-five (25) NTU's or less in all saltwater classes and in all lakes and reservoirs, and ten (10) NTU's or less in trout waters, are not considered significant.

f. The permittee will permit the Wilmington District Engineer or his representative to make periodic inspections any time deemed necessary to assure that the activity is being performed or maintained in strict accordance with the Special and General Conditions of this permit.

g. This general permit **does not** convey any rights, either in real estate or material, or any exclusive privileges; and it **does not** authorize any injury to property or invasion of rights or any infringement of Federal, State or local laws or regulations, nor does it obviate the requirement to obtain State or local assent required by law for the activity authorized herein. These may include, but are not necessarily limited to, a Dredge and/or Fill Permit (N.C.G.S. 113-229), a Coastal Area Management Act (CAMA) Permit (N.C.G.S. 113A-118), an Easement to Fill (N.C.G.S. 146-12) and a Water Quality Certification pursuant to Section 401 of the Clean Water Act.

h. authorization provided by this general permit may be either modified, suspended or revoked in whole or in part if the Wilmington District Engineer, acting for the Secretary of the Army, determines that such action would be in the best public interest. Unless subject to modification, suspension or revocation, the term of this general permit shall be five (5) years. Any modification, suspension or revocation of this authorization will not be the basis for any claim for damages against the United States Government.

i. This general permit **does not** authorize the interference with any existing or proposed Federal project and the permittee will not be entitled to compensation for damages or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

j. this general permit **will not** be applicable to proposed activity when the Wilmington district Engineer determines that the proposed activity would significantly affect the quality of the human environment and determines that an Environmental Impact Statement (EIS) must be prepared.

k. This general permit **will not** be applicable to proposed construction when the Wilmington District Engineer determines, after any necessary investigations, that the proposed activity would adversely affect areas that possess historic, cultural, scenic, conservation or recreational values. Application of this exemption applies to:

(1) Rivers named in Section 3 of the Wild and Scenic Rivers Act (15 U.S.C. 1273), those proposed for inclusion as provided by Sections 4 and 5 of the Act and wild, scenic and recreational rivers established by State and local entities.

(2) Historic, cultural or archeological sites listed in or eligible for inclusion

in the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 and its codified regulations, the National Historic Preservation Amendment Acts of 1980 and 1992, the Abandoned shipwreck Act of 1987 and the Native American Graves Protection and Repatriation Act.

(3) sites included in or determined eligible for listing in the National Registry of Natural Landmarks.

(4) Endangered or threatened species or habitat of such species as determined by the Secretaries of Interior or Commerce and conserved in accordance with the Endangered Species Act (16 U.S.C. 1531).

l. Permittees are advised that development activities in or near a floodway may be subject to the National Flood Insurance Program that prohibits any development, including fill within a floodway that results in any increase in base flood elevations. This general permit **does not** authorize any activity prohibited by the National Flood Insurance Program.

m. At his sole discretion, any time during the processing cycle, the Wilmington District Engineer may determine that this general permit will not be applicable to a specific construction proposal. In such case, the procedures for processing an individual permit in accordance with 33 CFR 325 will be available.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

James W. DeLony
Colonel, U.S. Army
District Engineer